

U.S. Reviews All Cases That Used Bugging

Justice Dept. Seeks
To Ban Evidence
Illegally Obtained

The Justice Department announced last night that it has begun an extensive review of all court cases—present and past—in which evidence may have been gathered by means of electronic eave-dropping.

The Department made the announcement in a paper filed in the U.S. Supreme Court in the case of Joseph E. Schipani, who had been convicted of income tax evasion.

In the supplemental memorandum it filed with the Court, the Department said:

"Recognizing its obligation not to use evidence obtained in violation of a defendant's protected rights in any criminal prosecution, the Department has initiated the program to discover prior instances in which this may have occurred."

The Department also disclosed that Acting Attorney General Ramsey Clark had sent on Nov. 3 a memorandum to all the U.S. attorneys cautioning them that the Department "must never proceed with any investigation or case which includes evidence illegally obtained or the fruits of that evidence."

A Department spokesman said the current investigation affects all cases that have

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U.S. Is Reviewing All Cases in Which Bugging Was Used

been brought to trial as well as pending cases.

The Department's memorandum to the Court said "an extensive review is presently being conducted in order to determine the instances in which there might have been monitoring affecting a case which has been brought to trial."

"Reports of the results of this continuing review are being sent to the Acting Attorney General," it continued.

"Similarly, a careful review of pending and prospective prosecutions is being considered by the Department for the purpose of determining what other cases might fall within this category."

As for the case of Schipani, the Justice Department recommended that it be sent back to U.S. District Court in New York City "for a new trial, should the Government seek to prosecute petitioner anew."

The Department said it had been informed by the FBI in a memorandum dated Oct. 28 that although Schipani was not the subject of "direct electronic surveillance by agents of the FBI, he was a participant in various conversations electronically monitored on a number of occasions in 1961."

The FBI had installed a microphone at a place of business where Schipani and others frequently met because agents believed "that this establishment was being utilized for purposes connected with organized crime," the Department said.

The Department said that after receipt of the Oct. 28 memo it obtained logs that FBI agents kept of the bugging and examined them in detail. It found that some of the material had provided investigatory leads and other information used later against Schipani.

And the Department added: "Since there was material evidence against petitioner which was tainted, his conviction cannot stand . . ."

The Justice Department note that present Federal practice, adopted in July 1965, prohibits electronic surveillance "in all instances except those involving the collection of intelligence with respect to matters affecting national security."

Clark's Nov. 3 memo said: "This Department must never proceed with any investigation or case which includes evidence illegally obtained or the fruits of that evidence. No investigation or case of that character shall go forward until such evidence and all of its fruits have been purged and we are in a position to assure ourselves and the court that there is no taint or unfairness. We must, also, scrupulously avoid any situation in which an intrusion into a confidential relationship would deny a fair hearing to a defendant or person under investigation."

Schipani was convicted on five counts charging wilful attempt to evade income tax for 1956 through 1960. He was sentenced to three years imprisonment and fined \$12,500.